

(iv) *Written appeal.* If the appellant appeals the detention order but does not request a hearing, the FDA Regional Food and Drug Director shall render a decision on the appeal affirming or revoking the detention within 5-working days after the receipt of the appeal.

(v) *Regional Food and Drug Director decision.* If, based on the evidence presented at the hearing or by the appellant in a written appeal, the Regional Food and Drug Director finds that the shell eggs were held in violation of this section, he shall affirm the order that they be diverted, under the supervision of an officer or employee of the FDA for processing under the EPIA or destroyed by or under the supervision of an officer or employee of the FDA; otherwise, the Regional Food and Drug Director shall issue a written notice that the prior order is withdrawn. If the Regional Food and Drug Director affirms the order he shall order that the diversion or destruction be accomplished within 10-working days from the date of the issuance of his decision. The Regional Food and Drug Director's decision shall be accompanied by a statement of the reasons for the decision. The decision of the Regional Food and Drug Director shall constitute final agency action, reviewable in the courts.

(vi) *No appeal.* If there is no appeal of the order and the person in possession of the shell eggs that are subject to the order fails to divert or destroy them within 10-working days, or if the demand is affirmed by the Regional Food and Drug Director after an appeal and the person in possession of such eggs fails to divert or destroy them within 10-working days, FDA's district office or appropriate State or local agency may designate an officer or employee to divert or destroy such eggs. It shall be unlawful to prevent or to attempt to prevent such diversion or destruction of the shell eggs by the designated officer or employee.

(f) *Inspection.* Persons engaged in retail distribution of shell eggs shall permit authorized representatives of FDA to make at any reasonable time such inspection of the retail establishment in which shell eggs are being held, including inspection and sampling of

such eggs and the equipment in which shell eggs are held and any records relating to such equipment or eggs, as may be necessary in the judgement of such representatives to determine compliance with the provisions of this section. Inspections may be made with or without notice and will ordinarily be made during regular business hours.

(g) *Preemption.* No State or local governing entity shall establish or continue in effect any law, rule, regulation, or other requirement allowing refrigeration of unpasteurized shell eggs at retail establishments at any temperature greater than 7.2 °C (45 °F).

[65 FR 76112, Dec. 5, 2000]

PART 119—DIETARY SUPPLEMENTS THAT PRESENT A SIGNIFICANT OR UNREASONABLE RISK

AUTHORITY: 21 U.S.C. 321, 342, 343, 371.

§ 119.1 Dietary supplements containing ephedrine alkaloids.

Dietary supplements containing ephedrine alkaloids present an unreasonable risk of illness or injury under conditions of use recommended or suggested in the labeling, or if no conditions of use are recommended or suggested in the labeling, under ordinary conditions of use. Therefore, dietary supplements containing ephedrine alkaloids are adulterated under section 402(f)(1)(A) of the Federal Food, Drug, and Cosmetic Act.

[69 FR 6853, Feb. 11, 2004]

PART 120—HAZARD ANALYSIS AND CRITICAL CONTROL POINT (HACCP) SYSTEMS

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AUTHORITY: 21 U.S.C. 321, 342, 343, 346, 348, 371, 374, 379e, 381, 393; 42 U.S.C. 241, 2421, 264.

SOURCE: 66 FR 6197, Jan. 19, 2001, unless otherwise noted.

Subpart A—General Provisions

§ 120.1 Applicability.

(a) Any juice sold as such or used as an ingredient in beverages shall be processed in accordance with the requirements of this part. Juice means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree. The requirements of this part shall apply to any juice regardless of whether the juice, or any of its ingredients, is or has been shipped in interstate commerce (as defined in section 201(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(b)). Raw agricultural ingredients of juice are not subject to the requirements of this part. Processors should apply existing agency guidance to minimize microbial food safety hazards for fresh fruits and vegetables in handling raw agricultural products.

(b) The regulations in this part shall be effective January 22, 2002. However, by its terms, this part is not binding on small and very small businesses until the dates listed in paragraphs (b)(1) and (b)(2) of this section.

(1) For small businesses employing fewer than 500 persons the regulations in this part are binding on January 21, 2003.

(2) For very small businesses that have either total annual sales of less than \$500,000, or if their total annual sales are greater than \$500,000 but their total food sales are less than \$50,000; or the person claiming this exemption employed fewer than an average of 100 full-time equivalent employees and fewer than 100,000 units of juice were

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sold in the United States, the regulations are binding on January 20, 2004.

§ 120.3 Definitions.

The definitions of terms in section 201 of the Federal Food, Drug, and Cosmetic Act, §101.9(j)(18)(vi), and part 110 of this chapter are applicable to such terms when used in this part, except where redefined in this part. The following definitions shall also apply:

(a) *Cleaned* means washed with water of adequate sanitary quality.

(b) *Control* means to prevent, eliminate, or reduce.

(c) *Control measure* means any action or activity to prevent, reduce to acceptable levels, or eliminate a hazard.

(d) *Critical control point* means a point, step, or procedure in a food process at which a control measure can be applied and at which control is essential to reduce an identified food hazard to an acceptable level.

(e) *Critical limit* means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food hazard.

(f) *Culled* means separation of damaged fruit from undamaged fruit. For processors of citrus juices using treatments to fruit surfaces to comply with §120.24, *culled* means undamaged, tree-picked fruit that is U.S. Department of Agriculture choice or higher quality.

(g) *Food hazard* means any biological, chemical, or physical agent that is reasonably likely to cause illness or injury in the absence of its control.

(h) *Importer* means either the U.S. owner or consignee at the time of entry of a food product into the United States, or the U.S. agent or representative of the foreign owner or consignee at the time of entry into the United States. The importer is responsible for ensuring that goods being offered for entry into the United States are in compliance with all applicable laws. For the purposes of this definition, the importer is ordinarily not the custom house broker, the freight forwarder, the carrier, or the steamship representative.

(i) *Monitor* means to conduct a planned sequence of observations or